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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/058,640	01/30/2002	Andrew D. Bicek	S63.2-10015	5385
490	7590	09/10/2004	EXAMINER	
VIDAS, ARRETT & STEINKRAUS, P.A. 6109 BLUE CIRCLE DRIVE SUITE 2000 MINNETONKA, MN 55343-9185			LANDREM, KAMRIN R	
			ART UNIT	PAPER NUMBER
			3738	

DATE MAILED: 09/10/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/058,640

Applicant(s)

BICEK ET AL.

Examiner

Kamrin R. Landrem

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 June 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,4,5,8-11,13,14 and 17-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input checked="" type="checkbox"/> Other: <u>labeled drawing</u> . |

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1,2,4,5,10,11,13,14 rejected under 35 U.S.C. 102(b) as being anticipated by Dang (USPN 5,935,162).

With reference to Figures 2 and 7, Dang discloses a stent 10 having a proximal end and a distal end, the stent 10 comprising a plurality of axially spaced serpentine bands 20(a-e) (noted in yellow) comprising a plurality of struts (noted in blue) having substantially the same length (labeled on diagram) and connected by a plurality of wishbone connectors 350 (noted in orange). The serpentine band comprises a plurality of peaks and troughs that are longitudinally aligned with one another. The wishbone connectors have an elongate portion and distal and proximal ends having two legs extending therefrom. Each leg of the wishbone connector extends from a location on a serpentine band between a peak and trough. The proximal ends are circumferentially and longitudinally displaced from the distal ends. As shown in Figure 7, the elongate portions of the connectors have a plurality of turns and extend in a direction non-parallel to the longitudinal axis of the stent.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 8,9, 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dang in view of Dinh et al (USPN 6,019,789).

As discussed above, Dang discloses the stent as claimed. However Dang fails to disclose the ratio of peaks and troughs to the number of connectors as well as the width of the connectors. With reference to Figures 5b and 6b, Dinh teaches a stent 160 having plurality of serpentine bands 162 connected by a plurality of wishbone connectors 166, the serpentine bands 162 comprising alternating peaks and troughs, the number of peaks in the stent being twice the number of wishbone connectors 166. Dinh also teaches that the width of the serpentine bands 162 is greater than that of the wishbone connectors 166 to create a stent having selectively variable radial rigidity and longitudinal flexibility. Therefore in view of the teachings it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the stent disclosed by Dang to incorporate the features taught by Dinh to produce a stent that provides variable rigidity and longitudinal flexibility.

Claims 18-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dinh in view of Dang.

With reference again to Figure 6C, Dinh discloses a stent 170 comprising a plurality of first serpentine bands 172 having one geometry and second serpentine bands 178 having a different geometry. Second band 178 is attached to adjacent first band 172 by a plurality of 1st substantially straight connectors. Second band 178 has a repeating pattern of first connectors extending distally from second band and two or more first connectors extending proximally from the second band 178. The first serpentine band 172 is connected by struts that are greater in width than the second band 178 connected by narrow struts. Both first 172 and second 178 bands have a plurality of openings having different shapes. Dinh discloses the stent as claimed however Dinh fails to disclose that the two or more connectors are circumferentially and longitudinally offset from the two or more second connectors. With reference to Figure 7 Dang teaches a stent comprising a plurality of serpentine bands and a plurality of connectors having proximal ends that are circumferentially and longitudinally displaced from the distal ends to provide a stent with longitudinal flexibility. As shown in Figure 7, the elongate portions of the connectors have a plurality of turns and extend in a direction non-parallel to the longitudinal axis of the stent or can be substantially straight as shown in Figure 2. Therefore in view of the teachings it would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the stent disclosed by Dinh to have the offset connectors as taught by Dang in order to produce a stent having good longitudinal flexibility to maneuver through tortuous vessels.

Response to Arguments

Applicant's arguments filed 6/7/04 have been fully considered but they are not persuasive. The Applicant's arguments with regards to the disclosure of Dang are unpersuasive. Dang does in fact disclose the structure of the stent disclosed in independent claims 1 and 10. Applicant's arguments concerning independent claim 18 are unpersuasive. The modification of Dinh by Dang suggested producing a stent having struts with connectors that are circumferentially and longitudinally offset. The specific structure of Dang's connectors is not relevant. The motivation to modify Dinh by arranging its connectors in a manner that would render them offset from one another, longitudinally and circumferentially, was to provide a stent with improved longitudinal flexibility. The Examiner has provided a color-coded diagram (Figure 2 of Dang) in order to better illustrate the features that Dang discloses.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

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however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kamrin R. Landrem whose telephone number is 703-305-8061. The examiner can normally be reached on 8:00-5:00, Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott can be reached on 703-308-2111. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Kamrin Landrem
Examiner
AU 3738

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